IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1835 OF 2007

Hindustan Security Force .. Petitioner
v/s.
The State of Maharashtra and others .. Respondents

Mr. Subhash Jha i/by M/s. Law Global for the Petitioner.
Ms. A.S. Pai, Addl. Public Prosecutor for the respondents.
Ms. S.D. Khot for the intervenor-Mahesh M. Trivedi.

CORAM : R.M.S. KHANDEPARKAR
AND
SMT. V.K. TAHILRAMANI, JJ

DATED : 10TH OCTOBER, 2007

P.C.

Heard the advocate for the petitioner and the learned APP.

2. By way of the present petition, the petitioner is seeking direction in the nature of writ of mandamus to the respondents viz. the Police Authorities to forthwith take necessary steps as contemplated under sections 39, 145, 146,147,148,149 and 150 of the Criminal Procedure code in respect of the movable and immovable properties of Smt. Madhavi Dhirajlal Sagar(since deceased) and more particularly, Sagar Samrat Building, situated at M.K. Road, Opp. Charni Road Railway Station, Mumbai- 400 004 in terms of what was requested by the petitioner under letter dated 21st September, 2007..

3. It is the case of the petitioner that it is a proprietory concern engaged

in the business of providing security and in that capacity, they were employed by late Madhavi Dhirajlal Sagar for providing security guards for her building `Sagar Samrat'. It is also the case of the petitioner that under the agreement dated 15th February, 2007, one of the flats on the first floor was given on lease to the petitioner by the late Madhavi Dhirajlal Sagar. It is further case of the petitioner that on 27th August, 2007, Madhavi Dhirajlal Sagar passed away in her flat which was occupied by her on the second floor of the said building. As all her relatives are settled in U.K. but their whereabouts are not known to the petitioner, the petitioner informed about the death of said Madhavi Dhirajlal Sagar to V.P. Road Police Station and the Fire Brigade. It is further case of the petitioner that V.P. Road Police Station sealed the said residential premises of late Madhavi Dhirajlal Sagar. There are litigations pending in some of the courts concerning properties owned by late Madhavi Dhirajlal Sagar and that, therefore, the petitioner apprehends danger to her property from unscrupulous elements who may claim themselves to be relatives of late Madhavi Dhirajlal Sagar and try to trespass or grab the building and in the process, may commit offences under sections 143,144,449,450,456, 460 etc. of IPC and that, therefore, the petitioner through their advocate under letter dated 21st September, 2007 informed the Senior Inspector of Police, Mumbai about the said property in danger of being grabbed and intention of such unscrupulous elements. It is stated that despite the fact that petitioner has informed about the intention of unscrupulous elements in respect of the property of said Madhavi Dhirajlal Sagar, no steps have been taken and hence, the petitioner, by way of this petition seeks directions as prayed for.

4. The learned APP submitted that one Mahesh M. Trivedi, son of Mithalal Trivedi of Mumbai filed an application before the Police Authorities claiming right to the property in question based on the Will stated to have been executed by late Madhavi Dhirajlal Sagar during her life time. She has also produced a copy of the said Will which was produced by said Mahesh M.

Trivedi, which is placed on record.

5. It cannot be disputed, as rightly submitted by the learned advocate for the petitioner, that in view of section 39 of the Criminal Procedure Code, every person who is aware of the commission of offence or of an intention to commit any offence punishable under the provisions of IPC enumerated thereunder, shall forthwith give information about the same to the nearest Magistrate or Police Officer. The offences enumerated include sections 143, 144,449,450,456 and 460 of IPC which have been referred to in the petition.

6. Section 143 refers to punishment for being a member of an unlawful assembly. Section 144 refers to the offence relating to joining an unlawful assembly armed with deadly weapon. Section 449 refers to house trespass in order to commit an offence punishable with death. Section 450 refers to house trespass in order to commit an offence punishable with imprisonment for life. Section 456 refers to punishment for lurking house trespass or house-breaking by night and section 460 refers to all the persons jointly concerned in lurking house trespass or house-breaking punishable with death or grievous hurt caused by one of them.

7. If one refers to the ingredients of the above-referred sections and peruses the petition, it is apparent that the petition nowhere discloses any fact which could reveal either commission or intention to commit any of the offences which are covered by the above-referred sections. To the specific query in that regard with the learned advocate appearing for the petitioner, attention was sought to be drawn to para 3(V),(VI) and (VII) and para 4 of the petition. The said paras read thus-

> "V. The Petitioner was then approached and requested by Smt. Madhavi Dhirajlal Sagar (since deceased) for providing security ;guards for her building viz. `Sagar Samrat', situated

at M.K. Road, Opp. Charni Road Railway Station, Mumbai-400 004. The said building was owned and possessed by Smt. Madhavi Dhirajlal Sagar. Acceding to the request of the Smt. Madhavi Dhirajlal Sagar, the Petitioner provided security cover to her building. Hereto annexed and marked **Exhibit-` C** is the copy of the letter dated 4.4.2007 by virtue of which the Petitioner was appointed as a security agency for providing security guards to the building of Sagar Smart by Smt. Madhavi Dhirajlal Sagar.

VI. On 27.8.2007 Smt. Madhavi Dhirajlal Sagar passed away in her flat occupied on the 2nd floor of the aforesaid building. Since Smt. Madhavi Dhirajlal Sagar's husband had already passed away and since she did not have any issue and her relatives are settled in UK but thereabouts are not known, the Petitioner informed V.P. Road Police Station about death of Smt. Madhavi Dhirajlal Sagar to V.P. Road Police Station and Fire Brigade and accordingly, the officials of V.P. Road Police Station and fire brigade visited the flat of Smt. Madhavi Dhirajlal Sagar and her dead body was retrieved and came to be consigned to flames later on.

VII. V.P. Road Police Station put their seal on the residential premises on Smt. Madhavi Dhirajlal Sagar. Although the Petitioner made all attempts in the past few weeks to contact relatives of Smt. Madhavi Dhirajlal Sagar who are settled in UK so that they can be appraised of demise of Smt. Madhavi Dhirajlal Sagar but none of them could be contacted. Since the Petitioner has been appointed as security agency to safeguard immovable properties of the deceased and more particularly Sagar Samrat Building, it is their obligation to take necessary steps for protecting the properties owned and possessed by the deceased during her life time from being grabbed and encroached upon by unscrupulous elements. In view of the fact that there are litigation pending in some courts concerning the properties owned by Smt. Madhavi Dhirajlal Sagar, the Petitioner apprehending danger that unscrupulous elements claiming themselves to be relatives of Smt. Madhavi Dhirajlal Sagar may grab and/or trespass the said building and in the process may commit offences punishable under Sections 143, 144,449,450,456,460 etc., the Petitioner through their advocates' letter/complaint dated 21.9.2007 informed the respondents about the aforesaid properties of the deceased in danger of being grabbed and

intention of such unscrupulous elements of committing the aforesaid offences and requested them to take necessary steps for preventing commission of the aforesaid offences and to protect the properties of the decease from being grabbed in the near future. It was also requested that no documents be parted with anybody else claiming to be relative of the deceased and possession of all the properties of the deceased be protected by putting their own locks/seal on each of the properties owned by the decease and unless and until a claimant obtains letter of the administration and/or probate in respect of those properties of Smt. Madhavi Dhirajlal Sagar (since deceased) from a competent court of law, possession thereof be not parted with. Hereto annexed and marked **Exhibit-` D'** is the copy of the said letter dated 21.9.2007.

4. The Respondents despite being informed by the Petitioner of the intention and design of unscrupulous elements to commit the aforesaid offences in respect of the properties of Smt. Madhavi Dhirajlal Sagar, failed and neglected to take necessary steps as provided under various provisions of the Code of Criminal Procedure in utter disregard of their statutory duties and functions and in the process there is imminent danger of commission of the aforesaid offences by unscrupulous elements in respect of properties of Smt. Madhavi Dhirajlal Sagar which is likely to cause nuisance and danger to the said properties and therefore the Petitioner under these compelling circumstances has been rather constrained to approach this Hon'ble Court by filing the present petition thereby invoking extraordinary powers vested with this Hon'ble Court under Article 226 of the Constitution of India."

8. Plain reading of the above paras would disclose that none of these paras reveal any of the fact which could disclose either commission of any offence under any of the above referred provisions or even intention on the part of somebody to commit any such offence punishable under the above provisions of law.

9. It was then contended on behalf of the petitioner that petitioner has no personal interest in the property of the deceased Madhavi Dhirajlal Sagar but since the petitioner was entrusted with the job of security by the deceased lady during her life time, the petitioner thought it appropriate to seek necessary directions to avoid unscrupulous elements taking over the possession of the property of the deceased lady. However, it is an admitted fact in the petition itself that there are litigations pending in relation to the properties of late Madhavi Dhirajlal Sagar. Obviously, therefore, it is apparent that the right to properties of late Madhavi Dhirajlal Sagar is subject matter of adjudication in civil proceedings between the parties to the litigation and it is nowhere the case of the petitioner either in the petition or in the course of arguments that the property in question is either excluded from or that it cannot form part of such litigation. Added to this, as it is pointed out by the learned APP that already a person by name Mahesh M. Trivedi has come forward claiming to be the beneficiary under the Will executed by late Madhavi Dhirajlal Sagar in relation to the property in question. Being so, there is absolutely no scope for the Police Authorities to interfere in the matter. It is entirely for the civil court to decide about the right in relation to the property left by late Madhavi Dhirajlal Sagar, which will obviously, include the property in question.

10. In the above facts and circumstances of the case, at the outset, it was inquired with the learned advocate for the petitioner whether the petitioner would like to withdraw the petition. However, the learned advocate insisted for arguing the matter, and indeed continued with the arguments.

11. On perusal of the petition as well as upon hearing of the advocate for the petitioner, it is apparent that the petitioner has absolutely no locus standi in the matter nor has any right nor the petitioner has been able to make out any case which would justify action on the part of the petitioner in terms of section 39 of the Code of Criminal Procedure. The entire petition is nothing but an abuse of

process of court and waste of public time and, therefore, the petition deserves to be dismissed with exemplary costs. The petition therefore is dismissed with costs of Rs.50,000/-. The cost of Rs.50,000/- shall be deposited by the petitioner within two weeks from today in the Registry and on deposit thereof, the same shall be credited to the account of Maharashtra Legal Services Authority.

R.M.S. KHANDEPARKAR, J.

SMT. V.K. TAHILRAMANI, J.